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Supreme Court, U.S.
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No. 09-93

IN THE–
SUPREME COURT OF THE UNITED STATES

WILLIAM S. ANAPOELL, M.D.,

Petitioner,

v.

AMERICAN EXPRESS BUSINESS FINANCE CORP., KEY EQUIPMENT FINANCE, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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REPLY BRIEF OF PETITIONER

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ARGUMENT

I. Respondents' Brief in Opposition Misstates the Basis for Granting a Writ of Certiorari Here.

Respondents' brief in opposition misguides the Court with respect to the basis for granting this petition for certiorari to review a decision of a United States court of appeals.

In a purported paraphrasing of Supreme Court Rule 10, Respondents maintain that the Court will only consider granting a petition for certiorari when the court of appeals has "(i) entered a decision in conflict with the decision of another United States court of appeals on the same important matter, (ii) decided an important federal question in a way that conflicts with a decision by a state court of last resort, or (iii) so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." Respondents' brief, p. 6.

Respondents' characterization of Rule 10 entirely overlooks subsection (c), which provides, in relevant part, that review is appropriate when "a United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court." SUP. CT. R. 10.

In this case, Dr. Anapoell seeks review because the summary Tenth Circuit decision upholding the dismissal of his second amended complaint under FED. R. CIV. P. 12(b)(6) conflicts with decisions of this Court interpreting the standard for such dismissals, as articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-556 (2007), *Erickson v. Pardus*, 551 U.S. 89 (2007), and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). The district court and the Tenth Circuit have applied a much more stringent standard than contemplated by this Court in *Twombly* or its progeny. A grant of certiorari is appropriate where, as here, a United

States court of appeals has decided an important question of federal law in a fashion which contravenes with relevant Supreme Court authority. SUP. CT. R. 10.

Far from an attempt to "shoehorn" this case into the "category regarding conflicts amongst the federal circuit courts" (Respondents' brief, p. 7), this petition is based squarely on Rule 10, subsection (c).

II. Respondents' Brief in Opposition Effectively Admits that the Lower Courts' Reasoning Was Paradoxical.

In their brief, Respondents espouse the district court's finding (which was apparently adopted by the Tenth Circuit's summary affirmation) that the equipment lease limits the insurance charges to "costs that have a nexus to the insurance coverage." Respondents' brief, pp. 5, 15 (citing interpretation of key provision, "at Lessee's expense").

It cannot be denied that, to the extent costs were not actually incurred, either because they were wholly made up or inflated, they bear no "nexus" to the insurance coverage. *See* Dr. Anapoell's original brief, p. 19 (explaining this crucial self-contradictory aspect of lower courts' reasoning).

Dr. Anapoell alleged that Respondents charged him inflated sums which bore no relation to the actual costs of obtaining insurance. App. 32-33, ¶ 24; App. 36, ¶ 33. Thus, even under the "nexus" interpretation of the lease which Respondents now adopt, Dr. Anapoell has sufficiently stated a claim for breach.

Respondents have not, and cannot, articulate how fictitious charges can possibly hold a "nexus" to the cost of obtaining insurance. Neither did the Tenth Circuit in its summary affirmation of the district court's order.

III. Conclusion

For the reasons articulated herein and in his original brief, Dr. Anapoell respectfully requests that the Court

issue a writ of certiorari to the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted,

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